

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE:) 19-MD-2875 (RBK-JS)
)
) Camden, NJ
VALSARTAN NDMA PRODUCTS) April 10, 2019
LIABILITY LITIGATION) 4:05 p.m.

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE JOEL SCHNEIDER
UNITED STATES MAGISTRATE JUDGE

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1 (The following was heard via telephone conference at
2 4:05 p.m.)

3 THE COURT: We're on the record, In Re: Valsartan
4 NDMA Products Liability Litigation, Docket No. 19-2875.

5 Can we have the names of counsel on the phone,
6 starting with plaintiffs.

7 MR. SLATER: Hello, Your Honor. Adam Slater on
8 behalf of the plaintiffs.

9 MR. HONIK: Good afternoon, Your Honor. Ruben Honik
10 on behalf of the plaintiff class.

11 MR. BARTON: Good afternoon, Your Honor. George
12 Barton on behalf of the plaintiffs.

13 THE COURT: Defendants?

14 MR. HANSEL: Good afternoon, Your Honor. Greg
15 Hansel on behalf of Maine Auto Dealers, third-party payor
16 plaintiff.

17 THE COURT: Okay. So you're with the plaintiffs,
18 right?

19 MR. HANSEL: Yes.

20 THE COURT: Mr. -- I'm sorry, can I get the spelling
21 of your name?

22 MR. HANSEL: It's Greg Hansel, H-A-N-S-E-L.

23 THE COURT: Got it.

24 MR. HANSEL: Thank you.

25 THE COURT: Anyone else for plaintiff?

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1 MR. SLATER: Your Honor, I know that Daniel Nigh
2 will be calling in momentarily, but he's not on as yet.

3 THE COURT: Okay. Let's get defendants.

4 MR. GOLDBERG: Good afternoon, Your Honor. Seth
5 Goldberg from Duane Morris on behalf of the Princeton
6 defendants, and with me today are Jessica Priselac and Alan
7 Klein from my firm.

8 MS. COHEN: Good afternoon, Your Honor. This is
9 Lori Cohen with Greenberg Traurig on behalf of the Teva
10 defendants.

11 MR. TRISCHLER: Good afternoon, Your Honor. Clem
12 Trischler representing Mylan Pharmaceuticals.

13 MR. SMITH: And, Your Honor, this is Richard Smith
14 with Wiley Rein representing Torrent.

15 THE COURT: Is there anyone else on the phone who
16 has not yet entered their appearance?

17 MR. REEFER: Judge, this is Jason Reefer, also
18 representing Mylan.

19 MS. LOCKARD: Your Honor, Victoria Lockard from
20 Greenberg Traurig for Teva.

21 MR. RUBENSTEIN: And, Your Honor, Brian Rubenstein
22 from Greenberg Traurig on behalf of Teva as well.

23 MR. ST. PHILLIP: Your Honor, Peter St. Phillip for
24 Maine Auto Dealers Association for plaintiff.

25 THE COURT: Is that everybody on the phone?

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1 (No response)

2 THE COURT: Terrific. Thank you for your letters,
3 which have been received and reviewed.

4 We're going to hold these conference calls two weeks
5 after the in-person conference to help keep things on track,
6 to see if we can nip disputes in the bud, and to get ready for
7 the in-person conferences we hold on a monthly basis.

8 I'm delighted to see that the parties have done it
9 looks like a substantial amount of work to meet and confer on
10 issues. Things are moving along.

11 You've probably seen the direct filing order that
12 you submitted has been entered. You've seen Judge Kugler's
13 CMO number two.

14 There's some issues we're going to discuss that
15 Judge Kugler is going to have to decide, and that's fine, but
16 just airing the issues out I think helps the discussion and
17 helps move things along. When it comes to discovery and some
18 scheduling issues, that's within my bailiwick and I'll decide
19 those, and that's generally how things go.

20 There's not always a bright, clear line between the
21 issues that I'm going to address and what should be addressed
22 by Judge Kugler. I can only assure you that Judge Kugler and
23 I are in regular contact with each other about these issues.
24 I know his thoughts on most if not all of the issues, so I can
25 relay them to you. But, obviously, I'm going to defer

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1 ultimately to Judge Kugler if there's any questionable issue.

2 I think in terms of an agenda for this call, I think
3 in looking at the letters, I think we should proceed with the
4 order of issues that is in Mr. Slater's April 9 letter, and
5 then obviously we'll exhaust those issues and any other issues
6 the defendants, or anyone on the phone for that matter, wants
7 to address, we'll address.

8 Typically, we -- the way I work, not just in this
9 case, but in all my cases if you've been before me, I deal
10 with the plaintiffs' issues first, exhaust them. When we're
11 done, deal with the defendant's issues. And then open the
12 floor to any remaining issues anyone wants to address.

13 Some of the issues that, if not most of the issues
14 that the parties address in their letters, we're not going to
15 decide today. But you'll have the benefit of our thoughts for
16 your continuing meet and confer discussions, and hopefully
17 most if not all of these issues, like the discovery
18 confidentiality order, will be resolved by the time we meet at
19 the end of the month. Or if we have to, final decisions will
20 be made at that conference on that issue.

21 Some issues I think are going to take more time,
22 obviously, because they're more complicated, more complex,
23 like I don't think by the end of this month we're going to get
24 a final ESI protocol on the case. Obviously, that's an
25 important issue. A lot of information has to be digested.

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1 But at least we keep the discussion going.

2 So with that background, let's start with
3 plaintiffs' letter. The first issue is the plaintiffs'
4 leadership. And I guess, Mr. Slater, hopefully have you been
5 able to work out with your brethren your executive, liaisons,
6 steering, what have you committees?

7 MR. SLATER: Your Honor, with one exception, we
8 believe everything is worked out. We're still -- and the
9 Maine Auto Dealer attorneys are on the phone. We're not at a
10 point where we've reached full agreement with them. And I'm
11 not sure how much detail you want us to go in, and we're
12 probably a little uncomfortable getting into too much detail
13 with the defense on the phone at the same time. But with that
14 one exception, everything is worked out.

15 We've had a lot of law firms who contacted us, per
16 what Judge Kugler told us at the conference, if somebody wants
17 to be on the PST, they're -- they're getting a seat and
18 they're being included in our group. And I think that that --
19 the Maine Auto Dealers is really the only open issue at this
20 point.

21 THE COURT: Would it be helpful, but only with the
22 defendants' consent, if after we get through this joint agenda
23 and the defense counsel excuses themselves, if just
24 plaintiffs' counsel remain on the phone so that the only issue
25 we can discuss is the leadership organization of the

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1 plaintiffs. I understand your concern about sharing that with
2 the defendants.

3 Obviously, we wouldn't address the merits, but maybe
4 it would be helpful if I could give you the benefit of the
5 Court's thoughts on that issue, if the defense counsel would
6 have no objection after we get through the joint issues, if I
7 just talk to plaintiffs on the phone about the leadership
8 issue.

9 Defense counsel, what do you think?

10 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I
11 don't have an objection to that, and certainly any of my
12 defense colleagues could weigh in. But from our standpoint,
13 it seems fine with us.

14 MS. COHEN: And this is Lori Cohen on behalf of the
15 Teva defendants and I -- I, too, have no objection to that
16 limited focus on plaintiffs' leadership call after -- after we
17 get off.

18 THE COURT: Okay. We don't need to hear from all
19 defense counsel. Why don't you just -- if anyone has an
20 objection, defendants, to me just talking to plaintiffs'
21 counsel about the organization of their leadership structure
22 and nothing else, if you have an objection -- does anyone have
23 an objection?

24 (No response)

25 THE COURT: Okay. Hearing silence, maybe Mr. Slater

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1 and Maine, M-A-I-N-E counsel stay on the phone after
2 defendants hang up and let's see if we can get it hashed out.
3 Okay?

4 MR. SLATER: Great. Thank you.

5 THE COURT: The direct -- the direct filing order, I
6 think that's moot, right, because that's been entered, right?

7 MR. SLATER: Correct.

8 THE COURT: So at this point, Mr. Slater, does your
9 group expect the direct filing of individual what I call
10 personal injury or bodily injury complaints, or are we going
11 to see any more class actions?

12 MR. SLATER: From -- from what I've heard from
13 others, I think that there will certainly be personal injury
14 complaints starting to be filed, and there could be some other
15 class -- class action complaints filed. I think that the
16 majority of what we'll see from this point forward will likely
17 be personal injury complaints.

18 THE COURT: And I -- we saw your medical monitoring
19 complaint. It was a nationwide complaint with possible sub
20 classes of each state. Have you heard there's going to be any
21 more medical monitoring complaints or anything outside of the
22 categories that we've already seen?

23 MR. SLATER: With regard to medical monitoring,
24 we're in touch with a few other law firms that were
25 considering filing, and they're either going to file or just

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1 wait and incorporate what they want to do as part of the
2 master consolidated complaint process.

3 THE COURT: Great.

4 MR. SLATER: I don't anticipate any other categories
5 other than what we have -- you know, the four categories that
6 we've already seen so far.

7 THE COURT: All right. Next issue, service on
8 foreign defendants. As I understand the issue, defendants are
9 requesting that at least one of the different categories of
10 complaints be served pursuant to the Hague on the foreign
11 defendants. And is it the plaintiffs' position that, what,
12 service on the American companies is sufficient to bring in
13 the foreign companies, is that the issue?

14 MR. SLATER: It's actually -- you got -- not the
15 first part, Judge. The second part, and it might have been
16 confusing how we wrote the letter. I apologize.

17 Starting with ZHP, because that's what we addressed
18 in the start of that heading, John Du (phonetic) is a director
19 of ZHP China, who happens also to be a high-level executive
20 for -- for the U.S. entities they own, but he was served in
21 his capacity as a director of ZHP China, and I think that we
22 have agreement that the two complaints that were served on him
23 is good service on ZHP China. We -- we went New Jersey style
24 and we managed to get him one night. And so as far as we're
25 concerned on ZHP China, that foreign entity has been served.

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1 They were served with a personal injury complaint
2 and a class complaint on economics. And from our perspective,
3 that is more than sufficient to bring them within this case,
4 and there's no need to serve them with any other complaint as
5 a service issue for the reason that we can easily just -- if
6 they say, well, you need to file another complaint covering
7 this issue or that issue, our response is, well, if we just
8 amended the existing complaint and added those allegations, we
9 wouldn't have to re-serve it under the Hague because we added
10 some new allegations, so let's just move forward now with ZHP;
11 they've been served.

12 And as to the other defendants, we believe that as
13 long as we serve one of the existing complaints through the
14 Hague, that that should be sufficient to bring them in front
15 of this Court, and that we shouldn't have to worry about
16 serving each type of complaint to bring them into the
17 jurisdiction of the Court.

18 THE COURT: Before we hear from the defendants, I
19 think you said there are four categories. Let's make sure
20 we're on the same page about what those categories are.

21 Is one the consumer economic claim? Then there's
22 the bodily injury claim. Then is the third-party payor a
23 separate category?

24 MR. SLATER: If you want to slice and dice it, it
25 could be, but from our perspective it's an economic-based

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1 claim. So for purposes of our discussions, that and -- that
2 falls under the same heading as the consumer reimbursement
3 claims. I mean either way they've been put on notice they
4 have to return money, et cetera. That's the allegation.

5 So --

6 THE COURT: Is there a fourth -- is the fourth
7 category medical monitoring?

8 MR. SLATER: Again, if you were slicing and dicing.
9 But that's really a personal injury based/economic based. It
10 really walks in both camps.

11 THE COURT: Let me ask you this question before we
12 get to the defendants because it may help clarify the issue.
13 Do you know at the moment what proposed master complaints
14 plaintiffs are proposing to file?

15 MR. SLATER: The final determination hasn't been
16 made on that, so it would be -- there's not a final decision
17 on that yet.

18 THE COURT: Okay.

19 MR. HANSEL: Your Honor, this is Greg Hansel for the
20 Maine Auto Dealers, third-party payor case. As Adam Slater
21 said, the third-party payor case, it is an economic case, it's
22 a class case, and it's on behalf of a distinct group of
23 plaintiffs from the individual consumers. There's a lot of
24 overlap, but there's some differences. So we would just note
25 that it could be considered a separate category.

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1 But as far as the complaint goes, after the
2 leadership is established by the Court or by agreement or
3 both, I think, you know, the third-party payors may have a
4 separate master complaint, or they may do a combined master
5 complaint with the consumer economic group and possibly have,
6 you know, we're suggesting, separate counsel signing on behalf
7 of the third-party payors or a sub class of third-party
8 payors.

9 THE COURT: Okay. Mr. Goldberg, do you want to talk
10 for the defendants?

11 MR. GOLDBERG: I will talk for ZHP, but I think Mr.
12 Trischler is going to raise other issues, the reason is
13 because ZHP sort of is in a different camp, having been served
14 by way of Mr. Du, who resides in New Jersey, and we have
15 agreed with plaintiffs that they have served ZHP in the
16 personal injury and consumer class action cases.

17 And, you know, for the purpose of the master
18 complaints or other categories of complaints, we will accept
19 service on behalf of ZHP. But that really -- you know, the
20 ZHP issue is -- is really distinct from the other defendants,
21 some of whom have not been served at all, and I think Mr.
22 Trischler, on behalf of Mylan, will be talking to those
23 issues.

24 THE COURT: Okay. How many foreign defendants do we
25 have, besides ZHP and Mylan?

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1 MR. TRISCHLER: Your Honor, this is Clem Trischler.
2 Good afternoon. What we -- what I can tell the Court, and I
3 can't give you a precise number, but if -- if we look at API
4 suppliers, Active Pharmaceutical Ingredient manufacturers that
5 are named in this case, CHP is one, Mylan Laboratories is
6 another. There is a Hetero entity. There's an Aurobindo
7 entity. None of those, other than ZHP, that is in a unique
8 situation, have been served. I'm not aware of any other API
9 manufacturers that are part of this consolidated litigation.

10 Now, if we get beyond the API manufacturers and
11 begin looking at finished dose manufacturers, I can't -- of
12 the 40 plus defendants, I can't tell you how many of those are
13 foreign entities that would need to be served. But from the
14 defendants' perspective, what I can say is that I think the
15 issue of service is one of paramount importance because we're
16 -- we have been talking about meeting and conferring, and the
17 Court's interested in talking about discovery, and we're
18 contemplating entering discovery orders that are going to bind
19 parties that have never even been served and are not even at
20 this point participating in the litigation.

21 And so we would certainly like the service issue
22 addressed first, and I think what we proposed is a rather fair
23 compromise in whatever categories of cases that are going to
24 be part of this MDL. The Court mentioned four, that's -- I've
25 actually seen it in litigations forming -- involving four

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1 buckets of cases.

2 We believe those foreign defendants need to be
3 served for each class of complaint in accordance with
4 international law. The plaintiffs' proposal seems to be,
5 well, if we serve them once in any case, that's good enough,
6 and I respectfully submit that that's not the case.

7 For instance, my client, Mylan Laboratories, is
8 named in a number of personal injury cases, one of them is a
9 case called Tack, T-A-C-K. Let's assume hypothetically if the
10 plaintiffs' proposal were to be adopted, Mylan would be served
11 with the complaint in Tack and that would -- plaintiffs would
12 argue that that's good enough.

13 I submit, though, that when we start to get into
14 discovery, service in one class of cases does not create
15 jurisdiction over all claims, and it would simply be
16 inefficient to serve a defendant one time in one class of
17 cases where you don't have effect -- what I submit is
18 effective jurisdiction over that defendant. And so if we want
19 to get all of the defendants properly before the Court, I
20 believe they need to be served with each category of
21 complaint, and that's what we've asked for.

22 THE COURT: Mr. Trischler, let me ask you a question
23 or two. The three companies, Mylan, Hetero, Aurobindo, do I
24 understand that they're all based in India?

25 MR. TRISCHLER: That's certainly my understanding,

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1 Your Honor. Obviously, I'm only representing the Mylan
2 entities, but that's my understanding with the other two API
3 suppliers.

4 THE COURT: Okay. And let me -- let me just say --
5 let me understand what your position is. At the moment, we
6 don't know how many different categories of cases we're
7 having, whether it's going to be two, three or four, or maybe
8 a different number.

9 Hypothetically, let's just say it's two, okay? And
10 the first category is personal injury/bodily injury,
11 individual. If Mylan or one of these other two foreign
12 companies -- let's say Mylan is served with one personal
13 injury case pursuant to the Hague in India. Will it then
14 accept service for the 10 or 20 or 30 different complaints,
15 complaints naming the Mylan Laboratories India?

16 MR. TRISCHLER: Under your hypothetical, Your Honor,
17 you're asking as to 20 or 30 other personal injury complaints?

18 THE COURT: Yeah. I mean if -- let me see if I can
19 maybe be clearer. Hypothetically, there's a total of 20
20 personal injury complaints. We know there's going to be more,
21 but let's just use 20. Mylan India is served with one -- one
22 of the 20 complaints. Will that satisfy service for the other
23 19?

24 MR. TRISCHLER: Yes, that's -- that is the proposal
25 that we have made.

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1 THE COURT: All right. That's what you're asking.
2 And the plaintiffs are saying, what, as long as any complaint
3 is served pursuant to the Hague, no matter what category it
4 falls in, that satisfies service for all different categories?
5 Is that the dispute?

6 MR. SLATER: Yes, Your Honor. And I think the
7 concept of all these different categories I think has taken on
8 sort of a -- sort of a false significance here, because again
9 let's -- let's take your hypothetical and serve -- and Mr.
10 Trischler's client is served with the Tack complaint, and then
11 a month later the plaintiff amends it and adds economic
12 reimbursement claims and all these other things, it wouldn't
13 have to be re-served. They're in front of the court --

14 THE COURT: Right.

15 MR. SLATER: -- for whatever claims are brought. So
16 I think, you know, this is kind of becoming -- it's getting a
17 false significance, I think, really is -- I don't think
18 there's any law that would support such an offering.

19 THE COURT: But maybe -- this is an issue that's
20 ultimately going to be decided at the next in-person
21 conference. I'm not going to decide this. But it sounds like
22 we're making a mountain out of a molehill.

23 What I'm understanding is, ZHP is served, right?

24 MR. SLATER: Yes.

25 THE COURT: Okay. So there's no dispute that Mylan,

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1 Hetero, and Aurobindo haven't been served, India, the Indian
2 companies haven't been served yet. So at a minimum,
3 plaintiffs have to serve these three companies pursuant to the
4 Hague, right?

5 MR. SLATER: It appears that way now, --

6 THE COURT: Okay.

7 MR. SLATER: -- if we get them served in the U.S.,
8 but --

9 THE COURT: Right.

10 MR. SLATER: -- assuming they don't, yes, that's
11 true.

12 THE COURT: So what's the difference if they have to
13 serve one, two, three, or four different complaints pursuant
14 to the Hague? It's just a matter of paperwork, right?

15 MR. SLATER: Well, I think some of them may already
16 be in the works and may be fairly far along. So it may just
17 take a longer time and it's just more expenses and time. I
18 mean that's all it is.

19 THE COURT: Okay. All right. I -- let's defer that
20 issue. I think I understand the issue. I don't really think
21 it's a -- it's that significant of an issue, if in fact it's
22 conceded that the plaintiffs have to serve at least one
23 pursuant to the Hague on the Indian companies. So I guess the
24 dust will clear by the next conference, but this is an issue
25 that will definitely be decided at the next conference.

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1 Does anybody have a guesstimate, hypothetically, if
2 service starts today, how long it will take to serve properly,
3 pursuant to the Hague, in India?

4 MR. SLATER: I don't have experience with India,
5 Your Honor. I know generally people say anywhere from three
6 to nine months under Hague, usually closer to six to nine
7 months, unless someone wants to disagree with me, in any
8 country. But that could vary.

9 MS. COHEN: And -- and, Judge, this is Lori Cohen,
10 just -- just so I don't sit here quietly and let there be any
11 misconceptions. We -- we represent Teva, as you've heard,
12 which is in a different category. It's not the API, it's the
13 finished dose manufacturer. We have an entity that's in
14 Israel and so it's -- you know, so it's not just India. I
15 just wanted to make that clear. So, you know, later you're
16 not wondering why I didn't speak up on that.

17 And again we sort of take -- take the same position
18 as -- as you've heard from, you know, from Mr. Trischler that
19 -- that we believe that the categories, you know, that they
20 have effective Hague service in each of the categories. I
21 know that's going to be put off until the conference.

22 So I guess the only thing I would to the whole
23 discussion, for what it's worth, is, you know, we're trying to
24 reach a compromise here. If we wanted to kind of stand on
25 ceremony, if you will, we probably would say, well, he must

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1 serve each of the master complaints, once we figure out how
2 many they're going to be and what they are and who's in them.
3 And we're not going that far. You know, we just want to have,
4 as I think you've heard, proper service and proper
5 considerations in each category.

6 THE COURT: Let's -- let me -- let me focus on what
7 I think is a more important issue related to the service
8 issue, and maybe if we could get a resolution of that issue,
9 we can reach a compromise.

10 Defendants, let's -- let's -- I'm not picking on
11 anybody, let's take Mylan India, okay, Mr. Trischler? But I'm
12 not picking on you.

13 MR. TRISCHLER: Sure.

14 THE COURT: Will it be Mylan Indian's -- India's
15 position that unless and until it is served pursuant to the
16 Hague, six months, seven months, eight months, nine months,
17 whenever, that it does not have to respond to discovery in the
18 case?

19 MR. TRISCHLER: Your Honor, that's a -- that's a
20 very good and fair question, and it's -- it's part of the
21 reason for the preliminary discovery proposal that the
22 defendants put together. And I can only answer this question
23 on behalf of Mylan, I can't answer it for other API suppliers
24 because, for instance, from my discussions with our colleagues
25 on the defense side, I know that Aurobindo India and Hetero

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1 India are not even represented by counsel yet. So we have had
2 no communication with them. So I certainly can't speak to
3 what their position would be.

4 But we proposed, you know, as part of the -- the
5 preliminary discovery proposal that we would offer to produce
6 certain documents under protective order, including, for an
7 API supplier like Mylan Limited, the drug master file that
8 would include the processes and procedures pursuant to which
9 the API was produced, because the plaintiffs have indicated
10 what they're interested in knowing preliminarily is how -- how
11 did the impurities get into the drug. The drug master file
12 will explain the process. It will explain the testing and
13 quality control measures. We -- we've offered to produce
14 that.

15 So speaking only upon behalf of my client, and
16 assuming it was pursuant to an order that was without waiving
17 (inaudible) objections, the jurisdiction and venue, what we've
18 indicated that we would do for Mylan Laboratories Limited is
19 we'd be willing to confer to (inaudible) in litigation to
20 produce that preliminary discovery while the issue of service
21 is being taken care of. I -- I think that's a fair
22 compromise. But, again, I can only offer that on behalf of my
23 client, not for other API manufacturers who are not even yet
24 represented.

25 THE COURT: Well, let's see if we can get the

1 question answered, Mr. Trischler, because I really think this
2 is important. The Court has no interest, zero interest in
3 putting this case on ice for six, seven, eight, nine months,
4 okay? I -- we're just going to have issues. I'm just trying
5 to think this out.

6 I think a fair compromise would be this. I've --
7 we'll get to the core document discussion in this call. I'm
8 going to decide that issue. I'm not going to decide it today,
9 I'm going to decide it when we meet. But there's going to be
10 a fair compromise between what the defendants have offered and
11 what the plaintiffs have asked for.

12 I think what the plaintiffs have asked for is not
13 within the contemplation of what the Court envisioned, but on
14 the other hand, I think the defendants' voluntary -- what they
15 voluntarily agreed to produce is too narrow. And I anticipate
16 that we'll roll up our sleeves and the Court will identify the
17 core documents to be produced.

18 So I guess the question is, Mr. Trischler, and if
19 you're not prepared to answer it, be prepared to answer it
20 when you're here in a couple weeks, will your client, Ms.
21 Cohen, will your client take the position that you don't have
22 to produce any documents until you're served pursuant to the
23 Hague?

24 MS. COHEN: I'm happy -- I'm happy to jump in,
25 unless, Mr. Trischler, you want to jump in. But to respond on

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1 behalf of -- jumping to Israel as opposed to India here -- and
2 Teva. We -- we have never, Judge, taken the position, and I
3 think we've made this clear in our meet and confers, that we
4 would hold off or hold in abeyance, you know, this "core
5 discovery," whatever that is, wherever that lands, that we
6 would hold off on producing that until service is effected,
7 you know, in all regards. I think that, from our perspective,
8 again, it's a finished dose manufacturer. So (inaudible) the
9 list you were talking about in the letter, we -- we could
10 produce that without the Israeli entity being served under the
11 Hague, if that answers your question. So we're not going to -
12 -

13 THE COURT: Yeah, but -- but I'm telling you right
14 now that the core documents is going to be broader than what
15 you proposed. It's going to be narrower -- it's not going to
16 be as extensive as what plaintiff requests, but it's going to
17 be broader than what you propose. It's going to be what the
18 Court envisioned: identifiable, clearly relevant, non-
19 disputable, key documents. That's what we want to get at,
20 right at the -- right at the crux.

21 MS. COHEN: Yes.

22 THE COURT: Because I think a fair compromise would
23 be that if the plaintiffs -- if the defendants would agree to
24 participate in discovery and this core discovery as the
25 service moves along, then plaintiffs bite the bullet and

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1 instead of serving one complaint pursuant to the Hague, serve
2 two or three or four. I think that would be a very fair
3 compromise because that -- that gets the case rolling. I
4 don't see any material burden from serving one or two or three
5 complaints pursuant to the Hague, and then everybody's due
6 process and whatever concerns can be resolved.

7 So why don't you chew on that and we'll -- we'll
8 decide that at the next conference. Okay?

9 MS. COHEN: Okay.

10 MR. GOLDBERG: Your Honor, this is --

11 MS. COHEN: Thank you, Your Honor.

12 MR. GOLDBERG: Your Honor, this is Seth -- this is
13 Seth Goldberg. I just -- I hate to interrupt everything, but
14 I wanted to let you know that I'm going to be excusing myself
15 from the call and Ms. Cohen and Mr. Trischler will be filling
16 in for me as necessary.

17 THE COURT: So long, counsel.

18 MR. GOLDBERG: Thank you.

19 MR. HONIK: Judge Schneider, this -- this is Ruben
20 Honik. I just wanted to apprise the Court of one quick fact
21 that was brought to my attention that touches upon the issues
22 we've just been talking about, and that is that the MSP class
23 rep, the TPP has -- has apprised me that Hague service was
24 effected on Teva in Israel and that that has already occurred.

25 THE COURT: Good. Then there's -- then the only

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1 issue that has to be resolved is whether there's going to be
2 more than one service on Teva Israel, right?

3 MR. HONIK: Yes.

4 MS. COHEN: Right, Your Honor.

5 THE COURT: Right. And that will be resolved at the
6 -- when we get together in a couple weeks. Either me or Judge
7 Kugler will finally decide that, probably Judge Kugler, when
8 we get together.

9 Okay. So --

10 MR. SMITH: If I may, Your Honor, this is Richard
11 Smith. I think one reason that we're a bit hamstrung here on
12 the defense side is that there are some defendants who have
13 never been served at all and therefore, as you heard a moment
14 ago, do not have counsel, --

15 THE COURT: Right.

16 MR. SMITH: -- are not in the case, and so -- you
17 know, Aurobindo being one example, Hetero being another
18 example. The lawyers who are on the call right now for the
19 defendants are all in situations where we have an
20 international defendant who has not been served or in some
21 instances, as you've just heard, have been served, and a U.S.
22 defendant who has been served. And so we're here for that
23 U.S. defendant, and in some cases for both, and we, depending
24 on the scope of discovery, are able to respond to discovery
25 because we're here for a defendant. But you will have some

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1 other perhaps important defendants, such as Aurobindo or
2 Hetero, that although we have inquired what their position may
3 be, we have not been able to get an answer on the defense side
4 of -- of their position --

5 THE COURT: Right.

6 MR. SMITH: -- because they do not have counsel and
7 they're not in the case. And so that -- that may still be an
8 issue two weeks from now when we're in front of you, and I
9 just wanted to flag it now so that we're all thinking about
10 that. We certainly will be thinking about it on the defense
11 side over the next two weeks.

12 THE COURT: I appreciate that, counsel. It's a
13 point well taken. But I think this is what I would relay to
14 Hetero, Aurobindo, and whoever else hasn't been served yet.
15 It's implausible to this Court that they don't know that they
16 were named in this MDL and that they're a party to these
17 complaints. It's simply inconceivable that that's the case.

18 Their due process rights are obviously going to be
19 100 percent protected. They have a right and they can do
20 whatever they want, but the fact of the matter is, this
21 litigation is proceeding; the train is leaving the station.

22 If these parties decide they want to wait for the
23 last possible moment to enter their appearance, they have that
24 right; they're welcome to do that. But they are sophisticated
25 people and they know or should know that we're not holding up

1 the proceedings in this case waiting for them to decide to
2 enter their appearances. So if they make a strategic decision
3 not to participate in the litigation or not to give their
4 input for their calls, the consequences are going to have to
5 fall on their shoulders.

6 But, obviously, clearly we're not going to do
7 anything to impact or prejudice their rights, except if they
8 don't know it, tell them to look at the docket and get the
9 transcript. The train is leaving the station. If they want
10 to hop on and get their input into how we do things, they have
11 that right. But if they want to sit back and do nothing,
12 that's their right, wherever the consequences, chips may fall,
13 so be it. That's all I have to say on that point, counsel.

14 So I think we've been through one, two, and three.
15 The service on the foreign defendants, we understand what the
16 issue is, and that issue is going to be finally resolved at
17 the next conference.

18 The next issue is the core discovery. I've looked
19 at it. I've looked at it in detail. You know my general
20 thoughts. I think the plaintiffs, rather than focusing on
21 what I envision as "core documents," served the Rule 34
22 document request. That was not the purpose of this effort.

23 The purpose of this effort was to identify the
24 clearly relevant, relatively easily retrievable, discreet,
25 identifiable documents; the ANDA, the communications with the

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1 FDA.

2 I read your medical monitoring complaint, Mr.
3 Slater. You obviously -- or somebody obviously understands
4 the inspection process and what types of inspection reports,
5 et cetera, are prepared. That is what the Court envisioned
6 that the defendant would produce, not something that it would
7 have to do an electronic -- a sophisticated electronic
8 protocol to search until we get the final protocol in place.

9 So I would just ask if you could work with the
10 defendants to narrow the scope of what you're asking for to
11 relatively easily retrievable, identifiable, key, non-
12 disputable, relevant, non-privileged documents that nobody can
13 have any legitimate question, should be produced in discovery.
14 I'm confident you can work that out.

15 At the moment, are you going to get the insurance
16 policy information in the case at some time? Of course. Rule
17 26 says you're entitled to it; you're going to get it. Do you
18 really need that information this early in the case, rather
19 than focusing on what, you know, Judge Kugler identified as
20 the key documents?

21 An example is number six, "How and when you
22 discovered that the contamination of the Valsartan occurred
23 and the steps taken in response."

24 Probably that's a Rule 34 request, but it's hard to
25 say that it's core discovery because it will take so much

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1 effort to identify and track down those documents. So I would
2 just ask you, if you could sharpen your pencil a little bit,
3 plaintiffs, and get a revised list to defendants, meet and
4 confer, and we'll go over it at the next conference.

5 MR. SLATER: Of course, Judge. And just so you
6 know, I mean we served this on the defense and we had a meet
7 and confer on Monday, and I think that ultimately we needed
8 the Court's guidance because our approach was, tell us what
9 you are willing to give us, tell us what you dispute and why,
10 and let's negotiate through the disputed request so we can at
11 least know why you're saying this isn't core and what would be
12 the burden, but we weren't able to get engagement on that.
13 But hopefully now that we've had this discussion, we can get
14 some engagement.

15 And the second part of that, Your Honor, and maybe
16 you can give us some guidance is, we also said, look, is it
17 maybe that you'll want to stage some of this -- you know, this
18 discovery and maybe you can tell us, look, this might take a
19 little longer, and we said we're completely open to that also.

20 So, you know, we felt like we wanted to put on the
21 table what we're looking for and then get from the defense,
22 okay, we're agreeing to this, this is what's in dispute, let's
23 talk about how we narrow the dispute.

24 I think that's what you're saying, that's -- that's
25 what we are -- we're fully prepared to do and were prepared to

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1 do Monday.

2 THE COURT: Good. Well, you can just tell by my
3 examples, insurance polices, litigation holes and hold harm --
4 and -- I'm sorry, litigation holes, communications with PBMs,
5 I mean you'll request those in Rule 34 document requests, but
6 agreements with wholesalers, do you really need that right
7 now? Is that -- is what we're talking about with -- I don't
8 really think that's within our contemplation of what is
9 "core."

10 So, again, I think you have the benefit of the
11 Court's thoughts. We're trying to reach a middle ground
12 between Rule 34 and Rule 26. In no way, shape, or form does
13 this early production prejudice your right to make Rule 34
14 requests. But we think it's important that you get these core
15 documents. It'll -- it'll help guide your discovery in the
16 case so you don't go down a rabbit hole. It'll help you
17 identify relevant custodians you want to use and so forth.

18 Okay. That's the benefit of the Court's thoughts on
19 that issue. So we'll discuss that at the next conference, the
20 core discovery, and we'll have a final direction on that.

21 Number five, plaintiffs' initial profile forms.
22 That's fine. We're waiting for the Court's -- parties'
23 comments. Hopefully we're hear further on that at the next
24 conference.

25 The ESI protocol. Again, I think that is one of

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1 those issues that is more involved and will take a lot of
2 discussion, and we'll get an update on that at the next
3 conference.

4 With regard to what you call a protective order,
5 what we call a discovery confidentiality order, I anticipate
6 that this order will be finally resolved at our next meeting.
7 It's hard for the Court to weigh in on the dispute. I don't
8 know what the disputed terms are.

9 I think from reading the papers, this is a different
10 case than Benicar was. It's more complicated because we have
11 different types of defendants who might be in competition with
12 each other, so there might be situations or there is likely to
13 be situations where one defendant doesn't want another
14 defendant to see certain of its documents. We'll have to
15 account for that.

16 I've relayed to you my thoughts about
17 "confidentiality." I think we're putting the cart before the
18 horse on that. I'm very sensitive to the confidentiality
19 issue.

20 I remember when I practiced, how easy it was to
21 stamp documents confidential. If the Court determines that
22 parties are over-designating documents confidential, there are
23 consequences for that. And in all the years I've been doing
24 this, I've only had one issue, one legitimate issue in 12
25 years about confidentiality.

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1 So in principle there should be a confidentiality
2 provision in the order parties can designate. The rubber
3 meets the road when the Court has to decide whether or not a
4 confidentiality designation is appropriate or not.

5 If a document is confidential and it deserves to be
6 confidential, it will be -- the designation will be upheld;
7 medical records, personnel records, secret formulas, et
8 cetera. But we all know just because a document is not
9 helpful to a party or a party might be embarrassed about, is
10 not a sufficient grounds for designating a document as
11 confidential. So I'm not so worried about that issue.

12 With regard to using the Benicar order, again I
13 don't know the issues that the parties dispute, but it just
14 seems to me we have to account for the special circumstances
15 of this case.

16 In a perfect world, what the best of all
17 circumstances would be, to take the language from Benicar and
18 use that as a form, and defendants can add whatever they want,
19 this way the Court doesn't have to re-read language that it
20 already approved. So we'll use Appendix S and just language
21 the parties dispute or want to use, and whatever the disputes
22 are, we'll resolve them at the next conference. That's the
23 best I can say, counsel.

24 MR. SLATER: Thank you, Judge. And that's -- that's
25 the approach we've asked for, just so that we didn't have to

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1 -- that language that -- a lot of the basic language is the
2 same between -- or similar between the two orders. So we just
3 wanted to start with what the Court has blessed and then --
4 that helps us a lot. I think we'll be able to look that up
5 and --

6 THE COURT: Yeah.

7 MR. SLATER: -- modify the order now.

8 THE COURT: If there's no dispute about the Benicar
9 language, use it, because we already approved it. We don't
10 have to re-read it. And identify the language in dispute and
11 we'll -- we'll get it resolved.

12 MS. COHEN: And, Judge, this is -- this is Lori
13 Cohen again. And our team has been kind of taking the lead on
14 (inaudible). We definitely will -- we'll go back and
15 (inaudible).

16 As you can see from our submission, we've spent a
17 lot of time, you know, trying to facilitate the discussions
18 between all the different defendants. You know, as you've
19 heard already and you know, there's many defendants, there's
20 many defendant groups. You can imagine it's a lot of
21 (inaudible), no offense taken by anybody, I hope.

22 But, you know, we obviously sent out a protective
23 order draft that was based on the District of New Jersey, the
24 template protective order. And so we didn't pull this out of
25 the air, we actually used one that was approved in your

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1 district. We had all the different defendants and their --
2 their in-house counsel (inaudible) and we've submitted that
3 before the last conference.

4 We really just wanted the plaintiffs to take the
5 time and look at our draft. We did also incorporate the
6 Benicar information. We didn't ignore that. We looked at
7 that; we incorporated it where appropriate.

8 But as you said, this is a different situation, we
9 have different concerns. And I think the plaintiffs have just
10 not been willing to look at the draft we sent them and instead
11 only want to go by Benicar. So we tried to merge the district
12 template, the Benicar information, other MDLs, and input from
13 all the different defendants. And I think what would really
14 move things along efficiently is if the plaintiffs would --
15 would look at our draft and take -- you know, take some time
16 with it, as opposed to us having to scrap it, start over and
17 go back to the drawing board with all the different defendants
18 here.

19 And I think in terms of the actual issues, I think
20 you've hit very, you know, (inaudible) key issue, which is the
21 different defendants, and that's why we want to have a two-
22 tiered, you know, confidentiality approach. As you probably
23 saw, that wasn't practical or needed in Benicar. So that's a
24 big issue. Here I have to deal with (inaudible) no
25 inadvertent (inaudible) designation.

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1 So there are a couple of key issues we've tried to
2 meet and confer. And I think it would help a lot of
3 plaintiffs would kind of take a look at the draft we sent them
4 back before the last conference.

5 THE COURT: That reminds me of -- let me -- I hate
6 to butt in, but let me just -- I don't want to lose this
7 thought. I just wonder if you want to -- if you should build
8 into the order a 50 -- Federal Rule of Evidence 502(d) order,
9 which deals with the inadvertent production and waiver.

10 Frankly, I don't know why --

11 MR. SLATER: It's in there, Judge.

12 THE COURT: Okay. If it's in there, that's fine.

13 MR. SLATER: The Benicar order basically addressed
14 it because we had this exact issue raised when we -- when we
15 -- when we argued over the Benicar order. So I think it
16 actually does address -- there's a section on inadvertent
17 production that says that they're protected and they can
18 redesignate or pull things back. There's a whole process for
19 that.

20 UNIDENTIFIED COUNSEL: The defendants' version also
21 has a provision on that as well.

22 THE COURT: Listen, we've -- we approved -- we
23 approved the Benicar order, obviously. Appendix S is approved
24 by the Court. I probably entered a thousand of those orders.
25 So all that language is agreeable. There's no dispute about

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1 that language. So hopefully that language can be used and
2 then identify what's in dispute.

3 MR. NIGH: Yes, Your Honor. This is -- this is
4 Daniel Nigh. I wanted to be fair to Ms. Cohen's point of view
5 and that is, we understand and we've reviewed that order in
6 detail. We've reviewed that draft. And basically the
7 position that we have tried to accomplish is to take whatever
8 the changes are that Ms. Cohen has proposed in her draft and
9 kind of identify those, and to identify those changes in the
10 draft proposal that we have that utilizes the language agreed
11 upon in Benicar. So if there's anything that's missing, we
12 would just ask for the defendants to cite those as well.

13 THE COURT: Yeah. I think you're going to work this
14 out. I don't think this is going to be a controversial issue,
15 and I think we're going to have so many more substantive
16 issues to deal with in the case, I think we'll get through the
17 DCO issue.

18 I think that takes us through, let me double check,
19 plaintiffs' agenda. Plaintiff, did we miss any issues?

20 MR. SLATER: We did not, Your Honor. When we get to
21 the defense, there's something I'd like to just bring to the
22 Court's attention. But I think as to plaintiffs' issues,
23 we've covered them.

24 THE COURT: Okay. Let's turn the floor over to the
25 defense. I have your letter. I'm not -- letters. I'm not

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1 really sure what issues you want to address now, so the floor
2 is yours.

3 MR. SLATER: Your Honor, before we get into that, is
4 it okay if I just -- I think we have to get on the same page
5 process-wise for the future conferences with Your Honor.

6 THE COURT: I made a note about that. What -- what
7 do you -- I was going to ask who should be --

8 MR. SLATER: (Inaudible) meet and confer Monday as,
9 you know, we understand that Your Honor wants things be done
10 so we can talk through the issues and figure out what was --
11 what was in dispute or what was not so we can put our joint
12 agenda together for Your Honor.

13 During the call on Monday, we told the defense we
14 were preparing the joint agenda for today's conference and
15 we'd send it to them later or the following morning. We sent
16 it Monday night, late in the night.

17 And then we got an email from the defense on Tuesday
18 that said thanks for sending that over with all of our
19 positions laid out in it, but we're going to be sending a
20 letter to the Court later today. And we -- we said, well, we
21 don't understand, we said we were going to do a joint agenda.
22 And our -- basically the response was, well, this is what the
23 Court wants and this is our understanding of how the Court
24 wants it done, which was very confusing to us.

25 So we then said to the defense, okay, but can you

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1 tell us if there's anything you're going to put in your letter
2 that's beyond what we discussed on Monday because we only
3 addressed what we discussed and if there's another issue, we'd
4 like to know so we can address it. We didn't get a response.

5 We then got the defendants' letter late yesterday,
6 and we're somewhat chagrined that there was a bunch of
7 substantive briefing on a bunch of issues that were never
8 discussed, that we didn't know was going to come to the Court.

9 Now, we're confident that those issues aren't going
10 to really have much significance at this point. We feel like
11 it was -- it was -- we're not that concerned. But as we go
12 forward, we really felt like we should at least bring it to
13 Your Honor's attention so we can at least be on the same page,
14 to hopefully do these joint agendas where both sides know what
15 they're saying --

16 THE COURT: Right.

17 MR. SLATER: -- and both sides can address it --

18 THE COURT: Right.

19 MR. SLATER: -- and not have this type of situation
20 repeat.

21 THE COURT: Well, what the Court envisioned in a
22 perfect world would be a concise, joint letter listing the
23 issues that the parties want to address and, you know, a very
24 brief summary of what their positions are. If it's -- if it's
25 impractical for the parties to do that, then prepare the joint

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1 agenda, propose the issue that are going to be discussed, and
2 then if each side feels it needs to submit a letter brief,
3 submit separate letter briefs, but only on the issues that
4 both parties are going to address so that everybody's on
5 notice of what's discussed. That would be the first thing.

6 The second thing is, frankly, I didn't anticipate
7 this many people on this call. That's fine, but maybe at the
8 next meeting we can find out who is going to be on these
9 calls. I'll leave it at that.

10 UNIDENTIFIED COUNSEL: That's understood.

11 THE COURT: Okay. Defendant, what issues do you
12 want to address?

13 MS. COHEN: Judge, this is -- this is Lori Cohen
14 again. Just to -- to respond to that, and we're obviously
15 happy now with that (inaudible) to address the next agenda the
16 way that it's been described and have it as containing one --
17 one, you know, letter, as you said, with each position. We
18 just weren't certain of how to approach it this time and
19 that's what we said. But I do think if you look at our
20 letter, we did follow the agenda items that we jointly sent to
21 you and albeit with some background admittedly.

22 THE COURT: No problem.

23 MS. COHEN: In part three of the letter, you'll see
24 the agenda items match perfectly and mirror exactly what the
25 parties sent in.

1 But I think going to the letter, and I'll, of
2 course, let others chime in. You know, on the first -- on the
3 first issue, Judge, we obviously have already talked about the
4 core discovery issues, number one. And I think that's been
5 addressed.

6 I think on the second issue, it talks about the
7 service issue on the foreign defendants. We've talked about
8 the confidentiality order. We'll obviously try to meet and
9 confer on that.

10 And the only other -- the only thing I would say is
11 that I do think that we'll be looking at the printed profile
12 forms and the ESI protocols. We just got those, you know,
13 like less than two days ago. We'll be looking at those and
14 sending comments. You probably don't want to hear us talk now
15 until we have a chance to meet and confer. So we'll do that.
16 And I don't know if anybody else on the -- on the defense side
17 has anything more to add. But I do think we tracked the
18 agenda; we covered the same issues plaintiff did, so I don't
19 think we've gone beyond that, other than the background we
20 provided.

21 THE COURT: Counsel, this is our first call; we're
22 just getting together. I'm sure things are going to smooth
23 out, and I certainly have no reservations with the caliber of
24 counsel in this case, that there's going to be disagreements,
25 but we're going to proceed along professionally and everybody

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1 is going to be on an equal play and will get equal say and
2 argument and brief, whatever they reasonably want.

3 I would add one more thing. There's one more thing
4 I have to rely on you all for help on this.

5 The way we worked it out was, when we get together
6 at the end of the month, we schedule to meet with me at 10:00
7 and to meet with Judge Kugler at 10:00. Some months we're
8 going to have a lot of issues to discuss, motions to address,
9 and we'll need the time. Some months maybe we won't need as
10 much time, and I don't want you all wasting your time. So
11 I'll rely on you. If you tell me, you know, a day or two
12 before when we're supposed to get together that, Judge, we
13 don't need four hours or three hours, why don't we get
14 together at 12 or 1 or 11, that's fine with me. I'm going to
15 defer to you. You know how as well as I do how much time is
16 needed.

17 The default setting is 10:00, but if you think we
18 reasonably and practically don't need that time, just let me
19 know and I'll move back the start time of our conference.

20 Okay?

21 UNIDENTIFIED COUNSEL: That's great. Thank you.

22 MS. COHEN: Thank you.

23 THE COURT: Okay. For the good of the order, are
24 there any other issues to address?

25 UNIDENTIFIED COUNSEL: No other issues.

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1 THE COURT: Great. Hearing none, have a good day,
2 counsel. We're adjourned.

3 MR. HANSEL: Judge?

4 THE COURT: Yeah. Oh, we have to discuss that issue
5 with Maine. Right.

6 MR. HANSEL: I thought you decided you didn't want
7 to do it.

8 THE COURT: No. No, no, no, no. So why don't
9 defense counsel hang up. Right, right, right, right.

10 MS. COHEN: Okay. Thank you, Your Honor.

11 UNIDENTIFIED COUNSEL: Goodbye.

12 THE COURT: So is just -- is just plaintiffs'
13 counsel on the phone?

14 UNIDENTIFIED COUNSEL: Yes.

15 MR. SLATER: Hopefully.

16 THE COURT: Can you guys -- oh, wait a minute.
17 Should this be on the record or off the record?

18 MR. SLATER: Off the record, if possible.

19 THE COURT: Off the record. We're off the record.
20 We're adjourned.

21 (Court adjourned)

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1 C E R T I F I C A T I O N

2
3 I, Roxanne Galanti, court approved transcriber,
4 certify that the foregoing is a correct transcript from the
5 official electronic sound recording of the proceedings in the
6 above-entitled matter.

7 _____
8 May 6, 2019

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